

Case No.: 4:12-cv-1073-VEH-TMP

¹ Plaintiff also alleged claims for false imprisonment and denial of equal protection, but those claims were dismissed by the court on April 22, 2014. *See* Doc. 13.

to that recommendation and the time limit for doing so. Doc. 27 at pp. 17-18. However, no objections were filed.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the court is of the opinion that the magistrate judge's report is due to be and is hereby **ADOPTED** and his recommendation is **ACCEPTED** as follows. The Court **EXPRESSLY FINDS** that plaintiff failed to exhaust his administrative remedies and that dismissal without prejudice is therefore appropriate.² An appropriate order will be entered separately.

DONE this the 7th day of July, 2015.



VIRGINIA EMERSON HOPKINS
United States District Judge

² Accordingly, the undersigned does not reach the merits of plaintiff's excessive force and failure to provide adequate medical care claims. However, were I to do so, I would have to point out that I disagree with the portion of the R&R that states that keeping handcuffs on a prisoner inside a holding cell for 48 hours is not "an objectively serious deprivation." (R&R, doc. 27 at p. 15). I agree, however, that there is no evidence that these defendants violated any policy by not removing plaintiff's handcuffs, or that they knew that this plaintiff would likely remain in handcuffs for the next 48 hours. Further, plaintiff does not allege that he was not checked on or did not receive food during this 48 hour period (and his handcuffs would have been obvious to any guard who interacted with him); yet he does not complain that these defendants interacted with him during this period but failed or refused to take off his handcuffs. So, I would agree on the merits that his complaints related to the handcuffs are due to be dismissed as to these defendants. (*Id.*).